Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-194

In the Matter of

WONDERBOWL, INC., a California corporation, WONDERBOWL-DOWNEY, INC., a California corporation,

Debtors in Proceedings Under Chapter X.

JAMES L. FALLON,

Petitioner,

vs.

SAM JONAS, TRUSTEE, H. J. CARUSO, BRUNSWICK CORPORATION, ALVIN S. BENNETT, SHELDON L. POLLACK, LEONARD S. SANDS and SEYMOUR ZUCKER,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Brief for Sam Jonas, Reorganization Trustee, in Opposition.

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SAM JONAS, TRUSTEE, H. J. CARUSO, BRUNSWICK CORPORATION, ALVIN S. BENNETT, SHELDON L. POLLACK, LEONARD S. SANDS and SEYMOUR ZUCKER, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Brief for Sam Jonas, Reorganization Trustee, in Opposition.

Opinions Below.

The Order of the District Court is attached to the petition as Appendix 1 and a copy of the Opinion of the Court of Appeals for the Ninth Circuit is included in the Appendix at page 4. The Opinion of the Court of Appeals is reported at 515 F.2d 18.

Jurisdiction.

In this case there is no proper basis for the exercise of this Court's jurisdiction on Writ of Certiorari. The petition gives no special or important reason for this Court's granting certiorari. The only hint of a proper reason for granting certiorari is Petitioner's suggestion that the Court of Appeals for the Ninth Circuit rendered a decision in conflict with a decision of the Court of Appeals for the Third Circuit; such is not the case, however.

Question Presented.

The sole question presented is whether the decision of the Court of Appeals for the Ninth Circuit is in conflict with the decision of the Court of Appeals for the Third Circuit in *In re Solar Mfg. Corp.*, 176 F.2d 493 (3rd Cir. 1949); this alleged conflict between the Circuits is claimed by Petitioner to present an important question under the Bankruptcy Act. Unless this Court chooses to determine whether the findings of the District Court are supported by the evidence and are not clearly erroneous, the other questions claimed by Petitioner to be presented by the petition simply do not exist. They have all been thoroughly tried and resolved by the District Court with a thorough review by the Court of Appeals. Such matters are clearly not among the special and important reasons for the granting of a writ of certiorari.

Statement of the Case.

The so-called "Statement of Material Facts" in the petition is inaccurate and misleading. A more succinct and accurate factual statement is set forth in the Opinion of the Court of Appeals for the Ninth Circuit (Appendix 2 to Petition and 515 F.2d, at 19). Wonderbowl, Inc. ("WI") and Wonderbowl-Downey, Inc. ("WDI") became debtors in reorganization proceedings upon the filing of petitions under Chapter X of the Bankruptcy Act in 1967. During that time

> "[m]ultiple lawsuits and hovering foreclosures prevented any feasible reorganization plan. Strenuous and prolonged efforts of the reorganization trustee, Jonas, ultimately resulted in sales, a lease, and compromises that together became the Amended Compromise approved by the district court. Everyone is satisfied except appellants Bennett, Pollack, Sands, and Zucker, . . . and appellant Fallon[1] who was president of both corporations and who holds promotional stock in both. His stock at all times has been subordinated to all common stock; he is precluded from participating in any distribution of either corporation's assets until the common stockholders have been repaid their full purchase price and all unpaid dividends."[2] 515 F.2d, at 19.

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[1]Apparently Bennett, Pollack, Sands and Zucker, who were co-appellants with Petitioner below, are now among the satisfied group. Their appeals were dismissed by the Ninth Circuit and they have not joined Mr. Fallon in his petition to this Court for a writ of certiorari.

[2]The report of the Special Master which was part of the record before the Court of Appeals for the Ninth Circuit [Clk. Tr. pp. 228, 229] contained findings that the public shareholders had received no return on their investment in fourteen years.

The District Court Order Approving the Amended Compromise was supported by extensive findings of fact and conclusions of law which were in turn amply supported by the evidence; this is the most probable explanation for Petitioner's choice not to include those findings of fact and conclusions of law in the Appendix to his petition. In order that this Court may be aware of the underlying facts upon which the Order was based, we attach a copy of those findings and conclusions as an Appendix to this Brief.

The District Court specifically found that the Amended Compromise was in the best interests of the estates and that the immediate threat of foreclosure by Union Bank constituted a substantial and imminent risk to both estates. *See* Findings 41, 42 and 43, Respondent's Appendix, pp. 16-17. When Petitioner perfected his appeal to the Court of Appeals for the Ninth Circuit, Respondent moved for and was granted an early hearing on the ground that the imminent foreclosure threatened to vitiate the Order Approving the Amended Compromise. In a succinct *per curiam* opinion, the Court of Appeals for the Ninth Circuit determined, at 515 F.2d 20, that "the district court did not abuse its discretion in approving the Amended Compromise"—that was the only issue properly before the court. On the basis of the findings of fact which were supported by ample evidence, the Court of Appeals specifically held that "the estates were in danger of losing their assets and that the sales, lease and compromises would benefit the estate of both corporations. The findings are amply

supported by the record and are not clearly erroneous." *Id.* Other "issues" raised by Petitioner in his brief before the Court of Appeals and now reasserted in his petition to this Court were quite properly ignored by the Court of Appeals either because there were no such issues or because they were deemed to be frivolous.

Summary of Argument.

Respondent believes that the decisions of the District Court and the Court of Appeals leave no questions appropriate for determination by this Court. The single issue addressed to the sound discretion of the District Court concerned the propriety of the advantageous disposition of substantially all of the assets of the two estates—as provided in the Amended Compromise—outside the framework of a Plan of Reorganization, where the risk of foreclosure on the major asset constituted a substantial and immediate threat to the existence of any assets in both estates. The Court of Appeals ruled that in the context of such an emergency, such a disposition is quite proper.

His argument that the approval of the Amended Compromise was improper having been rejected at every stage of this proceeding, Petitioner has now attempted to burden this Court by raising a series of frivolous or irrelevant "issues". Petitioner asserted most of these arguments in his brief to the Court of Appeals; quite properly, they were ignored because they were not germane to the single issue before that Court. To these, Petitioner has added the unsupported as-

sertion that the opinion of the Court of Appeals in this case (and in previous cases involving the estates of WI and WDI) is cryptic, uninformative and below the standard to which Petitioner feels appellate courts should be held. Given its most charitable interpretation, such an assertion, particularly in view of the fact that the Court of Appeals was asked only to decide whether or not the District Court had abused its discretion in approving the Amended Compromise, is an affront to the judges of the Court of Appeals for the Ninth Circuit as well as the Justices of this Court.[3]

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[3]It would appear that Petitioner is seeking to "bait" this Court into granting a hearing not only by the undocumented and unwarranted attack on the quality of the opinions of the Court of Appeals for the Ninth Circuit but also by the suggestion on page 12 of the petition that this Court has somehow shirked its responsibility in civil cases in favor of criminal matters in state courts.

ARGUMENT.

A. This Is Not a Proper Case for the Granting of a Writ of Certiorari.

Considerations governing review on certiorari are specified in Rule 19 of the Rules of this Court. First of all, it is clear that such review is not a matter of right but of sound judicial discretion, to be exercised only where special and important reasons exist. A reading of the petition in the instant case demonstrates that the only possible basis for considering the granting of the petition is that the decision below conflicts with the decision of the Court of Appeals for the Third Circuit in *In re Solar Mfg. Corp.*, 176 F.2d 493 (3rd Cir. 1949). In order to be a basis for the granting of certiorari, the conflict between the Circuits must be "on the same matter." Rules of the Supreme Court of the United States, Rule 19, 1(b). The fact that the Ninth Circuit indicated in earlier decisions[4] that it did not agree with the statement of the rule announced by the Third Circuit in *Solar* does not create such a conflict and, we submit, the statement in its opinion in our case that the Ninth Circuit declined to follow *Solar* is not a holding in conflict with *Solar*. A reading of the opinion of the Court of Appeals for the Third Circuit in *Solar* demonstrates that it is not in conflict with the ruling below.

Petitioner has chosen to ignore the emergency language in *Solar* as well as the crucial District Court

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[4]In *In re Wonderbowl, Inc.*, 424 F.2d 178 (9th Cir. 1970), the court stated, at page 180, after noting judicial and commentary criticism of *Solar*, that it did not need to resolve the question. In *In re Equity Funding Corporation of America*, 492 F.2d 793 (9th Cir. 1974), the Court affirmed a sale upon findings of fact that the market value of the property being sold was likely to deteriorate substantially, stating at page 794 that the findings were not clearly erroneous.

findings in our case to the effect that the Amended Compromise was necessitated by the constant and imminent threat of foreclosure of the major asset of the estate of WI. The District Court made the following findings:

> "41. That there is an immediate threat of foreclosure on the 21.32 acres by Union Bank.
>
> "42. That . . . the high risk of foreclosure of the First Deed of Trust on the unimproved property by the Union Bank constitutes a substantial risk or hazard to the WONDERBOWL-DOWNEY, INC., estate.
>
> "43. That . . . the high risk of foreclosure of the First Deed of Trust on the unimproved property by the Union Bank constitutes a substantial risk or hazard to the WONDERBOWL, INC., estate." Respondent's Appendix, pp. 16-17.

The District Court then concluded that "there is a substantial hazard in delaying the sale and compromise." Conclusion of Law No. 1, Respondent's Appendix, p. 25. After summarizing these findings, the Court of Appeals for the Ninth Circuit held: "The findings are amply supported by the record and are not clearly erroneous." 515 F.2d, at 20.

As these findings and conclusions suggest, the disposition of assets embodied by the Amended Compromise was effected in circumstances amounting to a true emergency. Petitioner has thus overlooked the key to understanding that the *Solar* case and the present case can indeed be read harmoniously.

Petitioner seems to have reached the conclusion that a conflict exists simply because the Third Circuit in *Solar* disapproved of a sale while the Ninth Circuit below approved of a sale. However, he has ignored the critical differences in the facts out of which the two cases arose, which clearly distinguish one case from the other. In *Solar*, where the Court disapproved of a sale of substantially all of the assets of a Chapter X estate outside the framework of a Plan of Reorganization, the record revealed no emergency which threatened to destroy or deplete the estate. However, the Third Circuit conceded that such a sale would have been proper had such an emergency existed, stating, at 176 F.2d 494:

> "We think that sales under court order not in pursuance of a reorganization plan are to be confined to emergencies where there is imminent danger that the assets of the ailing business will be lost if prompt action is not taken."

In every Circuit in which the question has been raised, including the Third Circuit, the Court of Appeals has held that a sale of assets by a Reorganization Trustee in emergency circumstances is a proper part of a Chapter X proceeding. This is so even in the Third Circuit. In *Solar, supra,* at page 494, the decision of the court turned on the absence from the case of "any such emergency". In order to give meaning to the term "emergency", the court cited with approval several earlier opinions of other courts in which sales under emergency circumstances were viewed as a necessary and proper part of the reorganization process. In doing so, the Third Circuit has adopted the test of "emergencies" developed in those other Circuits. A brief review of those cases will demonstrate that the Third Circuit test of "emergencies", as applied to sales in a Chapter X proceeding, is such that had this case been decided in

the Third Circuit the Amended Compromise would nonetheless have been approved.

In *In re V. Loewer's Gambrinus Brewery Co., Inc.*, 141 F.2d 747 (2nd Cir. 1944), the Reorganization Trustee sought and obtained an order from the District Court authorizing the sale of virtually all of the income-producing assets of the debtor, notably the debtor's brewery. The Trustee reported that: the business of the debtor had been discontinued; its liquor license had been surrendered; and, the brewery, with its equipment, was a "rapidly wasting asset," in that the approach of warm weather would cause the brewery machinery to lose substantially all its value. Further, both the real and personal property were heavily mortgaged and the mortgage on the brewery was in foreclosure. The Court of Appeals held, at 141 F.2d 749:

> "[T]he disposition of the property could not be longer delayed without peril to all interests. The properties were wasting assets and Section 116(3) of the Chandler Act authorizes the sale of 'any' of them. Not only was the sale authorized by Section 116(3) of the Act, but also by Section 115, 11 U.S.C.A. §515, under which the court is given the powers it would have if it had appointed a receiver in equity, one of which is to sell perishable property. [Citations] There is no requirement in the Chandler Act that the sale be in aid of a reorganization or that it await a liquidation in straight bankruptcy."

An earlier case arising in the Second Circuit involved a not so dire emergency. In *Frank v. Drinc-O-Matic*, 136 F.2d 906 (2nd Cir. 1943), the District Court had approved a sale by the Reorganization Trustee of vending machines owned by the debtor but in the possession of a lienholder whose lien amounted to more than one-half the value of the machines. The Trustee had no funds with which to redeem the property and saw a sale as the only way to realize the estate's equity in the machines. The Court of Appeals affirmed.

In re Rosenbaum Grain Corporation, 83 F.2d 391 (7th Cir. 1936), involved the sale of a short-term leasehold interest in a grain elevator, together with the grain stored therein, much of which was pledged to creditors. In authorizing the sale, the District Court found that: the Trustee had been operating at a loss; the elevator was not approved for the delivery of grain not already stored there; and the elevator reached its maximum value in the crop movement season, which was about to begin, extending for only several months. The District Court thus concluded that the entire value to the estate of the grain elevator lease would be lost if not disposed of immediately. 83 F.2d, at 392.

The Court of Appeals, concluding that the lease and the grain were both "perishable commodities," affirmed, holding, at 83 F.2d 393:

> "The term 'perishable commodity' is a relative term used ordinarily by courts and lawyers to describe a product, like fruit or fresh vegetables, which quickly deteriorates in quality and value. The reasons back of the rule, which support judicial orders directing their immediate sale, apply to the disposition of other property of an involved company. The equity court's action must be governed by a desire to realize the largest amount possible from the assets. A lease of a large grain warehouse with less than three months to run,

> falls within the class commonly, though somewhat loosely, called a perishable commodity. The same reason necessitates the closing out of grain (cash or future) in a warehouse, the lease upon which is about to expire."

In view of the *Loewer's, Frank,* and *Rosenbaum* decisions, it is clear that the sale in *Solar* would have been approved by the Court of Appeals for the Third Circuit had the property there involved been threatened by (1) foreclosure or (2) a rapid decline in its value to the estate.

The *Solar* case and this case, then, belong to entirely distinct classes. *Solar* involved a sale in circumstances not amounting to an emergency, and may be termed an "ordinary sale" case. The instant case involved sales, a lease, and compromises effected in the face of an extreme emergency; it is thus an "emergency sale" case. As to the propriety of emergency sales, as here, there simply is no conflict among the circuits and nothing is cited in the petition which even suggests that such a conflict exists.

Assuming, *arguendo,* that any conflict exists, that conflict relates solely to "ordinary sale" cases. It should not, and probably cannot, be resolved in this, an emergency sale case, for the reasons that the conflict could not have been created by the decision below. It follows that this case presents no issue requiring a ruling by this Court. Any ruling resolving the conflict, if any, among the decisions in the ordinary sale cases would necessarily go beyond the issues raised in this case. Further, such a ruling would not dispose of the single issue presented at all stages of this case: Is an *emergency sale* in a Chapter X proceeding proper?

If this Court sees a conflict in the ordinary sale cases and feels compelled to resolve it, Respondent respectfully submits that the conflict be resolved in a case which squarely presents it. This is not the case; it is not even an ordinary sale case. Petitioner has asked the Court to ignore the findings below and resolve a conflict between the Third Circuit and the Ninth Circuit which may arise if and when an ordinary sale case is decided by the latter so as to conflict with the decision of another Circuit in an ordinary sale case.

Underscoring Respondent's contention that the petition be denied is the continued existence of the emergency which necessitated the Amended Compromise in the first instance. The threat of foreclosure by Union Bank has been and remains constant and imminent. Beyond that, Respondent must hope that the proposed buyers and lessees remain interested in the property which they have agreed to buy or lease subject to court approval, for they may be permitted to refuse to consummate their respective sales or lease. In his earlier attempts to sell the very piece of real property which is the key to the Amended Compromise, Respondent learned that he could not bind the proposed buyers to their offer indefinitely. *In re Wonderbowl, Inc.*, 460 F.2d 1220 (9th Cir. 1972). Thus, the longer the finality of the Order Approving the Amended Compromise is delayed, the greater the chances that Respondent will lose his ability to enforce the agreements embodied therein. A real possibility exists that, if the petition is granted and the decision of the Court of Appeals is thereafter affirmed, the operation performed by Petitioner may then prove to have been successful but the patient will have died. Perhaps that is Petitioner's desire; that may explain the doubt expressed by the Ninth Circuit as to Petitioner's motivation.

B. This Case Presents No Question of Federal Law of Sufficient Importance to Require a Decision by This Court.

We believe we have demonstrated that the law is settled in all of the Circuits where the question has arisen that a sale of the assets of a Chapter X debtor can and should be confirmed where the very existence or the value of those assets is threatened by foreclosure or other emergencies.

Petitioner has attempted to make it appear that policy questions concerning the interpretation and implementation of the Bankruptcy Act are at issue here. They are not; we are concerned only with the propriety of a decision by the District Court approving the Amended Compromise—consisting of sales, compromises, and a lease—which approval was a matter within the discretion of the District Court.

It is axiomatic that compromises, being "a normal part of the process of reorganization," may be effected with the approval of the Reorganization Court. Bankruptcy Act §§27, 187, 11 U.S.C. §§50, 587; *Case v. Los Angeles Lumber Products Co., Ltd.*, 308 U.S. 106, 130 (1939). A Reorganization Trustee is also expressly authorized to lease or sell property of the estate. Bankruptcy Act §116(3), 11 U.S.C. §516(3). The fact that in this case, the compromises, sales, and a lease were presented to the District Court in one package does not dispossess the Trustee of his power to compromise, sell, or lease.

Petitioner's contention that this case presents important questions concerning the implementation of the provisions of Chapter X of the Bankruptcy Act is based entirely upon his unwarranted bootstrap assertion that

the Amended Compromise was a "Plan of Reorganization." Incredibly, the sole purpose for this attempted characterization was to create a basis for attacking the Amended Compromise as a Plan of Reorganization. On this subject, the Court of Appeals held:

> "Fallon's attempt to characterize the Amended Compromise as a plan of reorganization for the purpose of attacking it as a plan is a failure. These agreements are precisely what they purport to be —sales, a lease, and compromises. Packaging them together in the Amended Compromise does not alter their character." 515 F.2d, at 19.

Quite simply, then, this case involves only the unquestionable propriety of sales, a lease, and compromises in the course of a Chapter X proceeding. Construction of those portions of Chapter X setting forth the procedure to be followed before a Plan of Reorganization can be confirmed is not even remotely relevant to this case, for no Plan has been confirmed.

Further, it is manifest that the approval and ultimate consummation of the sales, compromises, and lease embodied in the Amended Compromise do not preclude the proposal of a Plan of Reorganization. If and when the Amended Compromise is consummated, the estates of WI and WDI will realize a cash fund for creditors and stockholders in excess of $1,000,000.00. In addition, the estate of WDI will benefit from a long-term lease of its bowling alleys which will be sufficient to satisfy the encumbrances thereon, leaving cash available to satisfy the claims of creditors and stockholders.

WDI presently does no more than lease its bowling alleys (on terms far less favorable to it than those of

the lease embodied in the Amended Compromise), and as Respondent has consistently failed in his attempts to effect a Plan of Reorganization because of the problems which are solved by the Amended Compromise, it is unreasonable to conclude, as Appellant has done, that approval of the Amended Compromise has closed the door to future proposals of a Plan of Reorganization of one or both of the Debtor estates. Appellant's bold assertion that the Amended Compromise is a Plan of Reorganization or precludes a Plan does not make it so. Moreover, it demonstrates Appellant's inability—or refusal—to consider the true nature and impact of the Amended Compromise on the two estates.

Even more frivolous is Petitioner's claim that an important question of tax law, requiring an interpretation of Section 337 of the Internal Revenue Code, is raised here. The effect of Section 337 upon the Amended Compromise was never in issue. The Court of Appeals properly refused to consider Petitioner's arguments on this point, which certainly cannot be termed a substantial question of federal law requiring a decision by this Court.

Conclusion.

We respectfully submit that the petition has failed to demonstrate any ground sufficient to justify the exercise of the certiorari jurisdiction of this Court. The most favorable interpretation that can be given to the petition filed with this Court is that Petitioner desires a further review by this Court of all of the factual and legal arguments that have been presented to and ruled upon by the Special Master, the United States District Court, and the Court of Appeals for the Ninth Circuit.

With the exception of the reference to the ruling of the Third Circuit in *Solar, supra,* and *Equity Funding, supra,* the petition filed with this Court does not include the citation of a single case other than those related to the never-ending dispute between H. J. Caruso and the Petitioner. With those two exceptions, all of the cases cited by Petitioner[5] refer to appeals and controversies in or related to these proceedings during their eight-year history. *Solar,* of course, is the alleged conflicting decision of the Third Circuit as to sales in Chapter X proceedings in other than emergency situations; *Equity Funding* is an earlier opinion of the Ninth Circuit in which the Court suggested that it did not agree with the philosophy of *Solar* but there, as in our case, affirmed a sale of assets in the course of a Chapter X proceeding upon findings that the assets were likely to substantially decline in value, which findings were held not to be clearly erroneous.

A review of the only five other cases cited by Petitioner will give some indication of the relationship of Petitioner to these proceedings and the other parties involved. That relationship may explain Petitioner's motivation as well as the observation in the opinion below:

> "That his [Petitioner's] subordinated position renders his stock worthless leads us to doubt whether the interests he seeks to vindicate are his own. . . ." 515 F.2d, at 19.

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[5] *In re Wonderbowl, Inc.,* 456 F.2d 954 (9th Cir. 1972); *In re U.S.A. Motel Corporation,* 450 F.2d 499 (9th Cir. 1971); *In re Wonderbowl, Inc.,* 424 F.2d 178, 180 (9th Cir. 1970); *In re Wonderbowl, Inc.,* 460 F.2d 1220 (9th Cir. 1972); *In re Wonderbowl, Inc.: Union Bank v. Goggin,* (9th Cir. No. 71-2337; unreported, but included at page 24 of the Appendix to the petition herein).

It is imperative that the Order Approving the Amended Compromise become final so that the sales and lease can be consummated. The pendency of Petitioner's attack, whether he wins or loses, might result in the loss of the sales and lease which have been found to be in the best interests of both reorganization estates. That will be the inevitable result of further substantial delays which may well be the result desired by Petitioner.

Reduced to its essentials, the petition is no more than a request that this Court review the Order of the District Court Approving the Amended Compromise, which approval was found by the Ninth Circuit to be a proper exercise of that court's discretion.

This could be a case where this Court may wish to consider the application of Rule 56(4) of the Rules of this Court. While any court-approved sale has the inherent risk of delay in consummation by bona fide appeals, this risk should not include frivolous appeals.

Respondent, therefore, prays that the petition be denied and that consideration be given to awarding Respondent damages caused by the filing of the frivolous petition.

Respectfully submitted,

MARTIN GENDEL,
H. MILES RASKOFF,
RICHARD A. FOND,
Attorneys for Respondent.

RESPONDENT'S APPENDIX.

Findings of Fact and Conclusions of Law Re Report of Referee and Special Master Re Application to Approve and Confirm Agreement of Compromise (H. J. Caruso) Application of Trustee for Authority to Sell Real Property and Application of Trustee for Authority to Make Lease With Brunswick Corporation.

United States District Court, Central District of California.

In the Matter of Wonderbowl, Inc., a California corporation, Wonderbowl-Downey, Inc., a California corporation, Debtors. In Proceedings Under Chapter X, Nos. 10184 and 10762.

The Report of Referee and Special Master re Application to Approve and Confirm Agreement of Compromise (H. J. Caruso) Application of Trustee for Authority to Sell Real Property and Application of Trustee for Authority to Make Lease with Brunswick Corporation and Supplement thereto, accompanied with the proposed Findings of Fact and Conclusions of Law and Order of all documents in reference thereto was filed with this Court on November 19, 1973. On Monday, December 17, 1973, a hearing was had before this Court to consider the Report of the Referee and objections thereto. Upon oral motion, hearing on the Report of the Referee and objections thereto was continued to January 7, 1974. Notice of said hearing having been given to all shareholders, creditors, those requesting notice, debtor and its attorneys, and all other parties of interest by United States mail not less than ten (10) days prior to January 7, 1974; and the Trustee having appeared by and been represented through his attor-

neys, MUNNS, KOFFORD, HOFFMAN, HUNT, and THROCKMORTON, and C.E.H. McDONNELL and D. B. COMMONS by JOHN F. WATKINS, ESQ., and DAVID B. COMMONS, ESQ.; and BRUNSWICK CORPORATION having appeared and been represented by and through its attorneys VON HERZEN, CATLIN, REINJOHN & CLEMENS by GEORGE L. CATLIN, ESQ.; the debtors by ROBERT W. DRISCOLL, ESQ.; CARUSO INTERESTS by and through their attorneys SULMEYER, KUPETZ & ALBERT by ARNOLD KUPETZ; shareholders of WONDERBOWL-DOWNEY, INC. by DAVID B. COMMONS, ESQ.; certain plan proponents by and through their attorneys SANDS, SCHAFFER, PACHTER, KAPLAN & GOLD by LEONARD SANDS; JAMES L. FALLON by and through his attorneys CURRER, KAYAIAN & KAKITA by WILLIAM J. CURRER, JR., ESQ.; UNION BANK by and through its attorneys COHEN, FREEDMAN & FELDMAN by LEE J. COHEN, ESQ.; SECURITIES & EXCHANGE COMMISSION by JAMES W. DUNLAP, ESQ.; and evidence both oral and documentary having been offered and received, and the Court being fully advised in the premises, does now make its Findings of Fact and Conclusions of Law based thereon:

FINDINGS OF FACT

1. That the hearing on the "Report of Referee and Special Master Re Application to Approve and Confirm Agreement of Compromise (H. J. Caruso) Application of Trustee for Authority to Sell Real Property and Application of Trustee for Authority to Make Lease With Brunswick Corporation" was set for hearing on Monday, December 17, 1973.

2. That objections to the said Report of Referee and Special Master were filed on November 29, 1973.

3. That on December 17, 1973, upon oral motion the hearing on the objections to Report of Special Master was continued to January 7, 1974, at 9:00 A.M.

4. That on December 19, 1973, this court entered its written order providing that:

a. That a hearing be held upon the "Report of Referee and Special Master re Application to Approve and Confirm Agreement of Compromise (H. J. Caruso) Application of Trustee for Authority to Sell Real Property and Application of Trustee for Authority to Make Lease with Brunswick Corporation" of the Honorable Russell B. Seymour, Referee and Special Master, on the 7th day of January, 1974, at the hour of 9:00 A.M. in the Courtroom of the Honorable David W. Williams.

b. That notice of the said hearing be given to all shareholders, creditors, those requesting notice, debtor and its attorneys, and all other parties in interest by mailing of the notice as prescribed by this Court in the United States mail, postage prepaid not less than ten (10) days prior to January 7, 1974.

c. That objections to the Report of Referee and Special Master be filed in the Court of the Honorable David W. Williams not later than January 2, 1974.

5. That notice pursuant to the order of this Court was sent not less than ten (10) days prior to January 7, 1974, to the parties as required by this Court's order.

6. That the Clerk of the United States District Court by Joseph Montague, Deputy Clerk, gave notice of filing "Memorandum and Report of Referee and Special Master re Application to Approve and Confirm

Agreement of Compromise (H. J. Caruso) Application of Trustee for Authority to Sell Real Property and Application of Trustee for Authority to Make Lease With Brunswick Corporation and Supplement thereto, and Proposed Findings of Fact, Conclusions of Law, and Order and Supplement to Report and Second Supplement to Report."

7. That SAM JONAS is a duly appointed, qualified and acting successor Trustee in the WONDERBOWL, INC., Chapter X proceedings and WONDERBOWL-DOWNEY, INC., Chapter X proceedings and in that capacity is familiar with the affairs of the debtors since his appointment as successor Trustee May, 1972.

8. Heretofore in March of 1967, an order approving Petition for Corporate Reorganization under Chapter X of the Bankruptcy Act was filed in March of 1967 and an order approvng such Petition and appointing A. J. BUMB, Trustee, and referring the matter to The Honorable RUSSELL B. SEYMOUR as Referee and Special Master was made. By appropriate order said Trustee was retained in this office and he continued as Trustee until his death in March of 1970.

9. On April 1, 1970, GEORGE T. GOGGIN was appointed successor Trustee to A. J. BUMB. By appropriate orders, said Trustee was retained in office and he continued as Trustee until his retirement in April, 1972. Thereafter, on May 8, 1972, SAM JONAS was appointed Trustee. By appropriate orders, said Trustee was retained in office and he continues as Trustee to the present time.

10. That WONDERBOWL, INC. was organized June 24, 1957, and WONDERBOWL-DOWNEY, INC.

was organized October, 1958 by the efforts of two men, HENRY J. CARUSO and JAMES L. FALLON.

11. That shares of WONDERBOWL, INC. were sold to the public for the approximate sum of $1,060,-000.00 which shares amounted to approximately 50% of the issued and outstanding shares of WONDERBOWL, INC. The balance of said shares, referred to as "promotional shares", were issued to various individuals involved in the formation of the corporation. Said promotional shares are subordinate in interest to the non-promotional shares. Of the promotional shares, almost 90% thereof were issued to JAMES L. FALLON and his wife.

12. That shares of WONDERBOWL-DOWNEY, INC. were sold to the public for the approximate sum of $2,200,000.00, which shares amounted to approximately 5% of the issued and outstanding shares of WONDERBOWL-DOWNEY, INC. The balance of said shares, referred to as "promotional shares," were issued to various individuals involved in the formation of the corporation. Said promotional shares are subordinate in interest to the non-promotional shares. Of the promotional shares, almost 80% thereof were issued to JAMES L. FALLON and his wife.

13. That no dividend or any other return on the investment of the shareholders of either of the estates has ever been paid by the debtors.

14. There are existing substantial and complex disputes between WONDERBOWL, INC. and WONDERBOWL-DOWNEY, INC. and the promotors of these corporations and various closely held corporations. These disputes have been the subject of substantial and protracted litigation involving these estates, but may all

in large part be traced to issues embodied in a plenary suit in this U.S. District Court entitled *Goggin v. Fallon, et al.*, No. 69-547. The full title of this case is set forth below.

15. This suit involves intricate dealings between the two publicly held Chapter X corporations, the promoters, and as many as ten closely held corporations dominated by individual defendants who are alleged to be fiduciaries, covering numerous individual transactions and spanning the period of approximately eight (8) years.

16. On March 24, 1969, the aforementioned action was filed in the U. S. District Court, Central District of California, entitled: A. J. Bumb (since deceased and succeeded by Sam Jonas), Trustee of Wonderbowl, Inc., a California corporation, and of Wonderbowl-Downey, Inc., a California corporation, Debtors in Proceedings under Chapter X of the Bankruptcy Act, Plaintiff, v. James L. Fallon, Henry J. Caruso, Caruso Enterprises, Inc., Newport Productions, Inc., Conventionland U.S.A., Inc., (formerly M.D.C. Corporation), Title Insurance and Trust Company, Standard Securities Corporation, Nassau Land Corporation, Serco-Downey, Inc., Wonderfair, Inc., Wonder Enterprises, Inc., Elson Development Corp., Wonderbowl-Covina, Inc., Wonderpalace, Inc., Fallon Productions, Inc., La Cienega Club, Inc., James L. Fallon Company, The Fabulous 100, Inc., Travelers Leasing, Inc., John M. Stokes Leasing Co., Town & Country Imports, Inc., Lewis G. Merwin; Stanley Sevilla, A. V. Caruso, Josephine Caruso, also known as Josephine La Cava, Gloria J. Caruso, C.D.C. Corporation, Freeway Pontiac, Inc., Dollar-A-Day Rent-A-Car, Inc., Caruso Discount Corp., Caruso Car Company, Inc., H. J. Caruso, Inc., Los

Angeles 333 Club, Inc., Gaslight Club of California, Inc., Dodge City, Inc., Economy Plymouth, Inc., Village Chrysler Plymouth, Inc., Don Moore, Inc., Leo Rule Oldsmobile, Inc., Day and Brown Insurance Co., Warren Day, Joseph E. Guccioni, Irving Sulmeyer, defendants, and numbered in the files of the Clerk of that Court 69-547-DWW. The debtors in the above-entitled action with the exception of James L. Fallon are hereinafter referred to as the "Caruso interests".

17. The property of the debtor WONDERBOWL, INC., consists of the following:

a. A parcel of real property located in Anaheim, California, improved with a bowling alley commonly known as the "Anaheim Bowl".

Legal description: "City of Anaheim, County of Orange, State of California: The East 300 Feet of the West 500 Feet of the South 500 Feet of Lot 1 of Tract No. 2854, as shown on Map recorded in Book 90, Pages 39 and 40, of miscellaneous maps, in the office of the County Recorder of said county."

b. A large parcel of real property consisting of 21.32 acres.

Legal description: Lot 1 of Tract No. 2854, in the City of Anaheim, County of Orange, State of California, as per map recorded in Book 90, Pages 39 and 40 of miscellaneous maps, in the office of County Recorder of said county.

Except the South 570.00 Feet of the West 420.00 Feet thereof, measured from the centerline of Katella Avenue and Walnut Street, as shown on said map.

Also except the South 210.00 Feet of the East 190.00 Feet thereof, measured along the South and East lines of Section 21, Township 4 South, Range 10 West, as shown on Map of the Fairview Colony Tract, as recorded in Book 1 Page 33 of miscellaneous record of maps, in the office of the County Recorder of said county. Also except that portion of the East 300.00 Feet thereof lying North of the North line of said South 210.00 Feet.
Also except the West 160.00 Feet of the East 460.00 Feet of the North 435.00 Feet thereof.

c. A long-term lease dated March 29, 1958, between Ralph Bowen and Hazel Bowen, as Lessors and M.D.C. Corporation as lessee, recorded April 4, 1958, in Book 4248, Page 3 of official records of Orange County, California, which lease covers unimproved real property.

Legal description: The South 200.00 Feet of the North 785.00 Feet of the East 300.00 Feet of the Lot 1 of Tract No. 2854, in the City of Anaheim, County of Orange, State of California, as per map recorded in Book 90 pages 39 and 40 of miscellaneous maps, in the office of County Recorder of said county.

Said land is included within the area shown on a map filed in Book 37, Page 15 of record of surveys in the office of said county recorder.

d. A long-term lease dated March 28, 1958, between Donald Semon, Doris M. Semon, John Sisel, and Eldreth Sisel, as lessor, and M.D.C. Corporation as lessee, as recorded on April 14, 1958, in Book 4247 at Page 585 of Official Records of Orange County, California.

Legal description: The South 150.00 Feet of the South 585.00 Feet of the East 300.00 Feet of Lot 1 of Tract No. 2854, in the City of Anaheim, County of Orange, State of California, as per map recorded in Book 90 Pages 39 and 40 of miscellaneous maps, in the office of the County Recorder of said county.

Said land is included within the area shown on a map filed in Book 37 Page 15 of the record of surveys, in the County of said recorder.

18. The property of the debtor, WONDERBOWL, INC., is encumbered as follows:

a. On the parcel of real property improved with the bowling alley: (1) said property is subject to litigation between Caruso Enterprises, Inc., and the state with respect to the exercise of an option to purchase in favor of the debtor at a purchase price of $376,-000.00; (2) a first trust deed in favor of State Mutual Life Assurance Co. with a principal balance of approximately $160,000.00; (3) a lease to Brunswick Corporation on a month-to-month tenancy in the approximate amount of $5,135.00 per month; (4) by order of court rental payments in the amount of $2,000.00 per month from Brunswick Corporation for rental of the Anaheim Bowl had been impounded pending the resolution of the litigation.

b. Upon the 21.32 acres of land set forth above: (1) first trust deed in favor of Union Bank with a principal balance of approximately $1,143,000.00; (2) a second trust deed in favor of Harold A. Steuber with a principal balance of approximately $555,000.00; (3) a third trust deed in favor of Caruso Enterprises, Incorporated with a principal balance of approximately

$1,400,000.00; (4) a fourth trust deed in favor of John P. Bruno with a principal balance of approximately $15,000.00; (5) certain real property taxes in the amount of approximately $175,000.00.

c. The Bowen Leasehold, the debtor is in arrearage on lease payments in the amount of approximately $90,-000.00 on the subject lease.

d. The Semon & Sisel Leaseholds, the debtor is in arrearage on lease payments in the amount of approximately $74,000.00 on the subject lease.

19. The matters of dispute between BRUNSWICK CORPORATION and the Trustee, include the following:

a. The ownership of certain bowling equipment on the premises of the Anaheim bowling center which had been sold by BRUNSWICK CORPORATION to WONDERBOWL, INC.

b. The ownership of certain bowling equipment on the premises of the Downey bowling center which had been sold by BRUNSWICK CORPORATION to WONDERBOWL-DOWNEY, INC.

c. A proposed sale of the Anaheim bowling center to BRUNSWICK CORPORATION in which BRUNSWICK CORPORATION claims that the property had been sold to them in December of 1968.

d. A sublease dated December 21, 1966, WONDERBOWL, INC. as lessor and BRUNSWICK CORPORATION as lessee, in which BRUNSWICK CORPORATION has contended that they exercised their option under said lease to extend that lease.

e. An order to show cause brought on by the Trustee why BRUNSWICK CORPORATION should

not pay to WONDERBOWL, INC. an increased rental payment for the use of the Anaheim bowling center on a month-to-month tenancy.

20. Hearings have been held on the matters in dispute between BRUNSWICK CORPORATION and the Trustee; rulings have been handed down on said matters; findings of fact and conclusions of law have been submitted to the Referee and Special Master; to this date said findings of fact and conclusions of law have not been signed. Adoption of the compromise recommended herein will render these matters moot.

21. With respect to the Trustee's "Application for Order to Show Cause to Determine Validity of Security of Brunswick, Inc. on equipment—Wonderbowl, Inc." filed February 26, 1973, the Referee and Special Master has ruled that all of the right, title and interest to equipment sold by BRUNSWICK CORPORATION to WONDERBOWL, INC. pursuant to a conditional sales contract dated August 18, 1958, and August 22, 1958, vested in BRUNSWICK CORPORATION on December 21, 1966.

22. With respect to Trustee's "Application for Order to Show Cause to Determine Validity of Security of Brunswick, Inc. on equipment—Wonderbowl-Downey, Inc." filed February 26, 1973, the interest to the equipment sold by BRUNSWICK CORPORATION to WONDERBOWL-DOWNEY, INC., pursuant to conditional sales contracts dated August 24, 1959, and September 16, 1959, vested in BRUNSWICK CORPORATION on September 1, 1966.

23. With respect to BRUNSWICK CORPORATION's "Application of Brunswick Corporation for Order to Show Cause to Grant Order Nunc Pro Tunc

December 17, 1968, to confirm sales of improved real property, commonly known as 1177 Katella Boulevard, Anaheim, California, and Settlement Agreement between Brunswick Corporation and Predecessor Trustee and to Instruct Trustee, Sam Jonas, to enter into an escrow for the sale of said property on confirmation of compromise and settlement agreement between said Trustee and Caruso Enterprises, Inc., et al." filed March 28, 1973, the Referee and Special Master has ruled that there has been no sale of said property of the debtor to BRUNSWICK CORPORATION, that any sale of said property is subject to confirmation by the District Judge before said sale is final and that the Trustee is not bound to sell said property until such time as there has been a confirmation of the sale by the District Judge and that the Trustee may upon cause shown withdraw his recommendation to sell such property.

24. With respect to the "Stipulation to Enlarge Hearing re Application of Brunswick Corporation for Order to Show Cause to Grant Order Nunc Pro Tunc December 17, 1968 to Confirm Sale of Improved Real Property, etc., to Include a Determination by the Court of the Lease Entered into between Wonderbowl, Inc. and Brunswick Corporation December 16, 1966" filed on June 26, 1973, the Referee and Special Master ruled that the lease dated December 16, 1966 is of no force and effect at this time. The lease lapsed of its own terms on May 31, 1968, when BRUNSWICK CORPORATION failed to exercise its option under said lease.

25. With respect to Trustee's "Application for Order to Show Cause re Increase in Rental Payments Under Month-to-Month Tenancy—Wonderbowl, Inc."

filed May 4, 1973, the Referee and Special Master ruled that said rental payments were to be increased to $7,250.00 per month effective May 4, 1973.

26. That WONDERBOWL, INC. defaulted on the note secured by the deed of trust held by Union Bank on the 21.32 acres of unimproved real property, and proceedings to foreclose by private sale were commenced by Union Bank prior to the commencement of above-captioned Chapter X proceedings.

27. On November 6, 1968, the former trustee, A. J. BUMB, obtained a sale of the 21.32 acres to Wrather Corporation (then owners of the adjacent Disneyland Hotel) for approximately $3,227,680.00.

28. On May 13, 1968, the Trustee filed an Order to Show Cause for Leave to Sell Free and Clear of Liens re: The Sale of the 21.32 acres to the Wrather Corporation.

29. On appeal to the 9th Circuit, the court ruled in *Caruso Enterprises, Inc. vs. A. J. Bumb,* Trustee [9th Cir. 1970] 424 F2d 178, that the trustee could not sell the property free and clear of the liens.

30. On June 17, 1970, the Trustee filed an "Application for Order to Show Cause to Determine Status of Bid; to Determine Liability of Bidder (Wrather Corporation)".

31. That Union Bank made application for leave to foreclose on the deed of trust, and on May 24, 1971, the District Court denied this application on the basis that the Wrather sale showed that the debtor had a substantial equity in the property.

32. Thereafter, the 9th Circuit Court of Appeals ruled that the Wrather Corporation was not bound to

purchase said property. *Wrather Corporation v. Security Pacific Nat. Bank, et al.* (9th Cir. 1972) 460 F.2d 1220.

33. That the Union Bank noticed the sale of real property under the power of sale contained in the Deed of Trust which sale was to have been held March 30, 1973; that upon Trustee's application for temporary restraining order this Court, on March 27, 1973, restrained the Union Bank from proceeding further with its sale.

34. That Trustee made application for permanent order to restrain foreclosure and on March 26, 1973, an Order to Show Cause to Restrain Foreclosure was held and upon the report of Referee and Special Master this Court restrained Union Bank from proceeding with its foreclosure sale.

35. That Union Bank applied to the United States District Court for an order vacating the temporary restraining order dated March 29, 1973.

36. On April 5, 1973, the Union Bank filed a Petition for Mandamus to Compel Obedience to Mandate with the United States Court of Appeals, 9th Circuit, which petition sought a writ of mandate from the 9th Circuit compelling the District Judge and Special Master to allow the foreclosure proceedings to go ahead.

37. On June 8, 1973, the 9th Circuit Court of Appeals denied Union Bank's petition without prejudice, subject to renewal after the hearing then scheduled before Judge Williams on June 11, 1973, on "Union Bank's Application to Vacate the Restraining Order."

38. That on June 14, 1973, this court denied Union Bank's application to vacate the restraining order and entered its findings of fact, on June 27, 1973.

39. That after this Court denied Union Bank's application to vacate the restraining order, Union Bank renewed its Petition for Mandamus before the 9th Circuit Court of Appeals. That renewed petition is presently before that Court and no decision has been rendered.

40. That a third party stranger to this proceeding known as the Pollack-Bennett Group submitted a proposed plan of reorganization to the Trustee for the purpose of reorganizing the corporations in this proceeding. Said plan was filed by the Trustee July 2, 1973. That subsequently, on October 18, 1973, said group filed a First Amended Plan of Reorganization after the proponents refused to allow Trustee the option to sell the real property of the debtor estates pursuant to Section 116(3) of the Bankruptcy Act, if emergency circumstances warranted such a sale.

a. That the third party plan proponents have effected no negotiations or agreements or proposals with any of the various disputing factions.

b. The Plan proposed by the third party plan proponents does not provide for money to be injected into the debtor corporations, but rather the monies to be supplied would be in the form of loans to the debtors. Neither arrangements nor commitments have been made for the purpose of obtaining necessary financing with which to proceed with the Plan.

c. That even if all of the conditions are met as set forth in the proposed plan, no penalty or requirement is made upon the proponents of said plan which would force them to carry through with a plan.

d. Plans and studies have not been prepared by the plan proponents with respect to the development of the proposed project.

e. The estimates of the value of the plan to the corporation are "off-the-cuff" estimates based upon the business experience of Sheldon Pollack.

f. That no feasibility or other studies have been started for the purpose of ascertaining whether in fact such a plan is feasible.

g. That the Plan has no provision to forestall foreclosure by the Union Bank and further makes no provision to salvage the estates in the event that foreclosure becomes a reality.

h. The plan proponents propose to use revenues from the bowling centers of both estates to pay the interest on the new loan which would be obtained for financing the proposed plan, yet there will be no funds available above those necessary to meet the existing obligations of the debtor estates.

i. No studies have been made to ascertain whether in fact the revenues from the bowling centers would be sufficient to pay interest, taxes, and other obligations of the corporations during the period when the project as proposed by the plan was being developed.

j. The plan proponents have refused to begin feasibility studies until such time as plan hearings have been scheduled.

k. That the plan proponents would not be required to proceed if the proposed plan proves to be unfeasible as ascertained by their studies.

l. The plan proposed is a mere option.

m. That the Pollack-Bennett Group could walk away from the proposed plan at any time prior to confirmation and without any penalties or restrictions.

41. That there is an immediate threat of foreclosure on the 21.32 acres by Union Bank.

42. That by reason of the high risk of foreclosure of the first deed of trust on the unimproved property by the Union Bank constitutes a substantial risk or hazard to the WONDERBOWL-DOWNEY, INC. estate.

43. That by reason of the high risk of foreclosure of the first deed of trust on the unimproved property by the Union Bank constitutes a substantial risk or hazard to the WONDERBOWL, INC. estate.

44. That a foreclosure by Union Bank would constitute a taxable sale which may result in income taxes being assessed against the Anaheim estate in an amount as high as $600,000.00, which taxes are of such a disastrous magnitude as to effectively bankrupt the Anaheim estate.

45. That if foreclosure is had by Union Bank the primary asset of the Anaheim estate will be lost.

46. That the compromise between the CARUSO interests, BRUNSWICK CORPORATION and the Trustee resolves all differences between those parties.

47. At the hearings on the application to compromise litigation of CARUSO ENTERPRISES, et al., beginning on March 2, 1973, substantial testimony was received indicating that serious income tax implications would arise if the property were sold by the debtor. These consequences would be approximately the same as if the property were sold at foreclosure.

48. That the tax consequences of a sale can be avoided by a liquidation that complies with the provisions of Internal Revenue Code Section 337.

49. That liquidation of the debtor estates qualifies under the provisions of Internal Revenue Code Section

337, eliminating the tax liability of the corporation for the sale of the property set out in the compromise.

50. The Trustee, SAM JONAS, has no monies with which to cure any of the defaults of the debtor corporations.

51. The Trustee, SAM JONAS, has no monies with which to pursue the litigation as against the various parties in this matter.

52. The estate of WONDERBOWL-DOWNEY, INC., has no monies with which to cure any of the defaults of the debtor corporations.

53. That the estate of WONDERBOWL-DOWNEY, INC., has no monies with which to pursue the litigation as against the various parties in the plenary action.

54. The estate of WONDERBOWL, INC., has no monies with which to cure any of the defaults of the debtor corporations.

55. That the estate of WONDERBOWL, INC., has no monies with which to pursue the litigation as against the various parties in the plenary action.

56. That Henry J. Caruso is now and has been since at least January 7, 1969, an officer of Newport Productions, Inc.; to wit, President.

57. That Henry J. Caruso is now and has been since at least January 7, 1969, an officer of Conventionland, U.S.A., Inc.; to wit, President.

58. That Newport Productions, Inc., is a party to the proposed compromise.

59. That Conventionland, U.S.A. Inc., is a party to the proposed compromise.

60. The claim dockets on file herein in WONDERBOWL, INC., show that the general unsecured creditors, excluding shareholders, CARUSO ENTERPRISES, et al., Union Bank and BRUNSWICK CORPORATION, have claims in the amount of approximately $200,000.00.

61. That an offer has been made to purchase said 21.32 acres plus the two leasehold interests of Semon & Sisel and Bowen for a total of $3.2 million dollars.

62. That an escrow has been opened at Trans California Escrow Company as Escrow 1-369, dated October 16, 1973, for the purchase of the 21.32 acres plus the two leasehold interests of Semon & Sisel and Bowen for a total of $3.2 million dollars which escrow provides for $800,000.00 cash to be paid through escrow.

63. That the Trustee holds the purchaser's check in the amount of $50,000.00 to be paid into escrow, only when sellers convey marketable title and court confirmation of the sale has been obtained.

64. That upon Court confirmation of sale, the balance of $750,000.00 will be paid into escrow by sellers.

65. That the buyer has sufficient financial ability to carry out the terms of the escrow.

66. That the compromise provides a definitive and concrete method for the payment of the indebtedness owed Union Bank, within a reasonable period of time, with a definite and financially capable existing source.

67. That the Trustee has endeavored since May of 1972, to obtain an offer of purchase of the 21.32 acres and the leaseholds.

68. That advertisements with respect to said properties have been placed in various newspapers in the area for the purpose of soliciting interested persons.

69. That the Trustee has himself personally solicited individuals and firms whom he thought might be interested in purchasing said properties.

70. That the Trustee has developed informational brochures which have been distributed to various parties who had requested information with respect to said properties.

71. That the Trustee has contacted or been contacted by more than twenty (20) persons including many real estate agents, but has not been able to find any buyer other than the offer which he has received.

72. The Trustee has not heretofore been able to offer a title free and clear because of the litigation over the various properties.

73. That the property in question is not a square parcel and does not have frontage on the total perimeter of the property.

74. That three corners of the property have been taken out of said property and are not part of the acreage or the leases.

75. That the value of real property is directly related to the frontage on the adjacent streets and boulevards.

76. That there is a substantial risk of losing the Semon & Sisel lease and the Bowen lease because of the excessive arrearages in the lease payments.

77. That without the Semon & Sisel leasehold and the Bowen ..... thereon.

78. That the Trustee has been negotiating with the proposed buyers of the property for a period of approximately six (6) months.

79. That the proposed buyers of the property have set a time limit within which their offer to purchase said property will remain open.

80. That in 1968 the Wrather Corporation bid approximately $3,227,000.00 for the purchase of the acreage and the leaseholds.

81. In the event that Trustee should be unable to deliver title to the property he will only be liable for the return of the deposit.

82. That objections have been filed to the compromise and to the sale of said property.

83. That all objections which have heretofore been filed with respect to the compromise and the sale of the property have been withdrawn except for the objection of James L. Fallon through his attorney, William J. Currer, Jr., Esq.

84. That because of the interrelation between WONDERBOWL, INC. and WONDERBOWL-DOWNEY, INC., any solution to the problem involving WONDERBOWL, INC., must contain provisions with respect to WONDERBOWL-DOWNEY, INC.

85. That it is in the best interest of both WONDERBOWL, INC. and WONDERBOWL-DOWNEY, INC., to resolve the disputes of both corporations with respect to rights as against CARUSO ENTERPRISES, INC. and BRUNSWICK CORP.

86. That the allocations of proceeds as between WONDERBOWL-DOWNEY, INC. and WONDERBOWL, INC., resulting from the said sale and com-

promise, shall be determined by this Court at such future time as deemed appropriate.

87. That the said compromise does not require the liquidation of WONDERBOWL-DOWNEY, INC.

88. That the WONDERBOWL-DOWNEY, INC. lease arrangements with BRUNSWICK CORPORATION are sufficient to pay out encumbrances and charges and leave the major asset of WONDERBOWL-DOWNEY, INC. free and clear for the stockholders of said corporation.

89. That WONDERBOWL-DOWNEY, INC. estate is not deprived of any of its assets.

90. That by reason of the compromise WONDERBOWL-DOWNEY, INC. can preserve its interests and claims as against WONDERBOWL, INC.

91. That the compromise does not lead to a dilution of the interest of WONDERBOWL-DOWNEY, INC. shareholders.

92. That Trustee filed on July 2, 1973, a Plan of Reorganization, which plan is known as the "Ming Moy Plan."

93. That the "Ming Moy Plan" meets the requirements of this Court set out in its findings of June 27, 1973.

94. That the "Ming Moy Plan" has not been rejected or withdrawn.

95. That the compromise does not require the liquidation of WONDERBOWL-DOWNEY, INC.

96. That as a part of the compromise WONDERBOWL-DOWNEY, INC., retains its interests and claims as against WONDERBOWL, INC.

97. That the following parties have heretofore been represented at the various hearings which concerned their interests herein: For the Trustee, SAM JONAS, C.E.H. McDonnell and Munns, Kofford, Hoffman, Hunt & Throckmorton, by Jerry R. Cahan and John F. Watkins, C.E.H. McDonnell, Special Counsel for the Trustee; Thorpe, Sullivan, Clinnan & Workman by Vincent W. Thorpe; David B. Commons, Special Counsel; Buchalter, Nemer, Fields & Savitch by Michael Oberst, Special Tax Counsel for Trustee. For the Debtor, WONDERBOWL, INC., Robert W. Driscoll; for the debtor, WONDERBOWL-DOWNEY, INC., Robert W. Driscoll; for the Securities and Exchange Commission, James Wallace Dunlap; for the shareholders of WONDERBOWL, INC., Baker, Ancell & Redmond by Mark G. Ancell; for the shareholders of WONDERBOWL-DOWNEY, INC., David B. Commons; for James L. Fallon, Currer, Kayaian and Kakita by William J. Currer, Jr.; for CARUSO ENTERPRISES, INC., Sulmeyer, Kupetz & Alperts by Irving Sulmeyer and Arnold Kupetz; for H. J. CARUSO, Buchalter, Neimer, Fields & Savitch by Murray M. Fields and Leonard Venger; for BRUNSWICK CORPORATION, von Herzon, Hutton, Catlin & Reinjohn by George L. Catlin; for Union Bank, Cohen, Freeman & Feldman by Lee J. Cohen, for Alvin S. Bennett, Sheldon L. Pollack, Leonard S. Sands, and Seymour Zucker, plan proponents and objectants, Sands, Shaffer, Pachter, Kaplan, Gold and Sherman by Nathan Markowitz.

98. The benefit to WONDERBOWL, INC. and WONDERBOWL-DOWNEY, INC. which will result from the compromise and the sales is approximately $1,038,000.00. That amount is arrived at as follows:

21.32 acres

1st Trust Deed—Union Bank		$1,143,000.00
2nd Trust Deed—Steuber		555,000.00
Leasehold interests—Semon & Sisel		74,000.00
Leasehold interest—Bowen		90,000.00
4th Trust Deed—John P. Bruno		15,000.00
Accrued Real Property Taxes		175,000.00
Sales Commission		192,000.00
	For a total of	$2,244,000.00
	Sale Price	$3,200,000.00
Less:	Liabilities	(2,244,000.00)
		$ 956,000.00
Caruso Interests—		478,000.00
Wonderbowl, Inc.—Wonderbowl-Downey, Inc.		478,000.00

Anaheim Bowling Center

1st Trust Deed—State Mutual Life		$ 160,000.00
Option Price—Caruso Enterprises, Inc.		376,000.00
Administrative Expenses—C.E.I.		24,000.00
	For a total of	$ 560,000.00
Sale to Brunswick Corporation		$1,120,000.00
Less:	Liabilities	(560,000.00)
Wonderbowl, Inc.—Wonderbowl-Downey, Inc.		$ 560,000.00
Proceeds from Sale 21.32 Acres		$ 478,000.00
Proceeds from Sale Anaheim Bowling Center		560,000.00
	For a total of	$1,038,000.00

99. There is a substantial equity for this estate and for the stockholders of the debtor corporations in and to the property described above. A sale pursuant to a plan of liquidation would preserve that equity for this estate and for the shareholders of the debtor corporation.

100. To the extent that any of the foregoing Findings of Fact are properly conclusions of law they are to be so deemed.

CONCLUSIONS OF LAW

1. There is a substantial hazard in delaying the sale and compromise.

2. There is a high risk of foreclosure of the First Deed of Trust on the unimproved property by Union Bank.

3. That the sales and compromise before this Court are the only means by which something may be salvaged from the debtor estates for the benefit of the stockholders.

4. That the compromise provides a definitive and concrete method for the payment of the indebtedness owed Union Bank, with a definite and financially capable source.

5. That all of the notices thus far given and hearings thus far held are sufficient for the purpose of considering the various matters involved.

6. All due process requirements concerning the sales and compromise have been met.

7. That sufficient notice has been given on the proposed lease between the Trustee and BRUNSWICK CORPORATION, said application for authority to make lease with Brunswick Corporation and order setting hearing being filed January 3, 1973, and notice thereafter having been given to shareholders, creditors, and the debtors and other persons pursuant to said order.

8. That sufficient notice has been given of the compromise, said notice of application of Trustee for compromise being filed on March 1, 1973, and hearings have been held or are continued thereon until present date.

9. That there has been adequate notice for the sale of the properties of the debtor WONDERBOWL, INC., said application for authority to sell real property and for order fixing hearing in form and manner of notice thereof and order fixing April 2, 1973, at 2:00 P.M. having both been filed on January 3, 1973. Hearings upon said application for authority to sell real property have been held or continued until the present time.

10. That notice sent to shareholders, creditors, those requesting notice, debtor and its attorneys, and all other parties in interest sent pursuant to the Order of this Court dated December 19, 1973, was an adequate notice.

11. That the requirements of the Federal Rules of Civil Procedure, Rule 53 and sub-parts thereof, have been properly complied with.

12. That there is no present conflict of interest on the part of Trustee.

13. That there is no conflict of interest with respect to David B. Commons, Esq., serving as Special Counsel to the Trustee for the purposes of assisting with the sale and compromise agreements.

14. The compromise and sales are appropriate and qualify under Section 116(3) of the Bankruptcy Act.

15. That there are adequate grounds for continuing the restraining order presently restraining Union Bank and anyone acting in concert with it from proceeding further with foreclosure of the 21.32 acres.

16. That the Report of the Referee and Special Master re Application to Approve and Confirm Agreement of Compromise (H. J. Caruso) Application of Trustee for Authority to Sell Real Property and Application of Trustee for Authority to Make Lease With Brunswick Corporation should be approved.

17. To the extent that any of the foregoing conclusions of law are more properly findings of fact they are to be so deemed.

DATED: Feb. 11, 1974, 8:05 A.M.

DAVID W. WILLIAMS, District Judge